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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

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CLYDE RAY SPENCER, MATTHEW )  
RAY SPENCER, and KATHRYN E. )  
TETZ, )  
Plaintiffs, )  
vs. ) NO. 3:11-cb-05424-BHS  
FORMER PROSECUTING ATTORNEY )  
FOR CLARK COUNTY JAMES M. )  
PETERS, DETECTIVE SHARON )  
KRAUSE, SERGEANT MICHAEL )  
DAVIDSON, CLARK COUNTY )  
PROSECUTOR'S OFFICE, CLARK )  
COUNTY SHERIFF'S OFFICE, THE )  
COUNTY OF CLARK and JOHN DOES )  
ONE THROUGH TEN, )  
Defendants. )

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DEPOSITION UPON ORAL EXAMINATION OF JAMES M. PETERS

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Thursday, November 8, 2012  
Olympia, Washington

EXHIBIT

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1 BE IT REMEMBERED that on Thursday, November 8,  
2 2012, at 9:02 a.m. at 2102 Carriage Drive SW, Building C,  
3 Olympia, Washington, before DIXIE J. CATTELL, Certified  
4 Court Reporter, appeared JAMES M. PETERS, the witness  
5 herein;

6 WHEREUPON, the following proceedings were had,  
7 to wit:

8 (EXHIBIT NOS. 1-41 MARKED)

9 JAMES M. PETERS, having been first duly sworn,  
10 testified as follows:

11 EXAMINATION

12 BY MR. JOHNSON:

13 Q Good morning, sir. Could you please state your name and  
14 spell it?

15 A Good morning. My name is James M. Peters, J-A-M-E-S M.  
16 P-E-T-E-R-S.

17 Q Let the record reflect this is the discovery deposition of  
18 James M. Peters taken pursuant to notice, and this  
19 deposition will be taken in accordance with all applicable  
20 rules.

21 Mr. Peters, have you ever been deposed before?

22 A I have.

23 Q On how many occasions?

24 A I don't recall.

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1 you've probably questioned a lot more witnesses than I  
2 have. You understand there's a difference between "I don't  
3 recall" and "I absolutely did not" --

4 A You understand --

5 Q -- is what I'm asking?

6 A You also understand, Counsel, that it's been 28 years ago?

7 Q I do understand that.

8 A All right.

9 Q So the best you can do is you don't think you did, right?

10 A I'm pretty sure I didn't.

11 Q So you are pretty sure that you did not speak with Katie  
12 Spencer prior to December 10, 1984, correct?

13 A Yes.

14 Q All right. Now, did you assess Katie Spencer's  
15 competency -- well, strike that.

16 Is it fair to say that on December 11 of 1984 one of  
17 the purposes you were interacting with Katie Spencer was to  
18 take a look at her competency?

19 A No. It was the only --

20 Q Okay. That was not one of your purposes?

21 A It was the only purpose.

22 Q Okay. Now, prior to sitting down with her -- well, strike  
23 that. Let's take you prior to the moment the videotape  
24 captures. Prior to that, had you made an assessment of  
25 Katie Spencer's competency?

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1       So you would not know if you ruled out imaginative  
2       recreation or not, correct?

3       A I would agree with that.

4       Q All right. What did you do to rule out suggestibility in  
5       your interview of Katie Spencer on December 11 of 1984?

6                   MS. FETTERLY: Objection; asked and answered.

7       A My -- my role in interviewing Ms. Spencer at that time was  
8       to determine whether she might be held competent by a court  
9       and whether she could relate any of the allegations to me.  
10      That was what I was there to do.

11      Q (By Mr. Johnson) Okay. And so did you do anything with  
12      regard to ruling out suggestibility at that time?

13                   MS. FETTERLY: Object to form.

14      A Counsel, she'd already made the allegations related to her  
15      father to three other people before I talked to her, and I  
16      was not there to conduct a forensic interview. I was there  
17      to determine whether she might be found competent and  
18      whether she could relate her account to me.

19      Q (By Mr. Johnson) We'll get there, but let me ask you this.  
20      Did you do anything to rule out suggestibility when you  
21      interviewed Kathryn Spencer on December 11 of 1984?

22                   MS. FETTERLY: Object as to form.

23      A I can't recall if I thought about that in 1984. It's 28  
24      years ago.

25      Q (By Mr. Johnson) Okay. You don't know if you did anything

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1       with regard to ruling out suggestibility or not; is that  
2       correct?

3   A I can't recall if that was on my mind 28 years ago.

4   Q Oh, okay. Has your understanding of suggestibility in the  
5       context of interviewing a child alleged victim of sexual  
6       abuse changed since 1984?

7   A Was your question has -- ask your question again, please.

8   Q Sure. I'll try to make it better. You said that you don't  
9       recall if suggestibility was on your mind when you  
10      interviewed Katie Spencer in December 11 of 1984. Was that  
11      your assertion?

12   A That's because my task, the reason I went there to talk to  
13      her, was to determine whether -- whether she might be found  
14      competent by the judge and if there -- if there were a  
15      charge and a trial, and if she could recount what she had  
16      previously told three other people with regard to her  
17      father's alleged abuse to me, who would be the person who  
18      would have to question her in court.

19   Q Okay. So let me see if I can take that answer and move on.  
20      Because you were doing what you just testified to, is it  
21      fair to say that you did not do anything with regard to  
22      determining the suggestibility of Katie Spencer on  
23      December 11 of 1984?

24                   MS. FETTERLY: Object as to form.

25   A I think I answered the question, Counsel. I told you --

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1 MS. FETTERLY: I don't think there was any. Go  
2 ahead and ask your question.

3 A Ask the question.

4 Q (By Mr. Johnson) Okay. Would you agree that in  
5 determining the competence of an alleged sexual abuse  
6 victim back on December 11 of 1984, it was important and  
7 necessary to determine whether the child had the mental  
8 capacity at the time of the occurrence concerning which the  
9 child is to testify, to receive an accurate impression of  
10 it?

11 A I think I answered that question already.

12 Q Okay. Go ahead.

13 A The answer was, I believe, that you need to make a  
14 determination as to whether the child had the ability to  
15 remember past events. I think we're saying the same thing.

16 Q All right. What did you do to assure that the child had  
17 the mental capacity at the time of the occurrence  
18 concerning which she was to testify that she had an ability  
19 to receive an accurate impression of it?

20 A Well, again, without -- without having either the  
21 transcript or the tape available to look at, I can't be  
22 specific, and I'm under oath, and I'm supposed to be  
23 specific. But, in general, she described events and  
24 behaviors attributed to her father, not attributed to  
25 anyone else, that showed precocious sexual knowledge that a

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1       five-year-old ordinarily would not have, behaviors that she  
2       had previously described to three other people who were  
3       doing either therapeutic or forensic interviews describing  
4       past events and did so, albeit with some difficulty, during  
5       that interview.

6       Q Okay. Would you agree that in establishing competence --  
7       this may sound a little bit alike, but I'm going to ask  
8       this one. Would you agree that, when you were establishing  
9       competence of a child sex abuse victim back in December 11  
10      of 1984, it was important to determine that the child had a  
11      memory sufficient to retain an independent recollection of  
12      the occurrence?

13      A Counsel, competence is decided by a judge at a competency  
14      hearing. In the state of Washington ordinarily that  
15      occurred on the first morning of trial. My job was not to  
16      determine competence. I did not have a robe and I was not  
17      a judge. My job was to determine and relay back to the  
18      prosecuting attorney impressions as to whether she might be  
19      found competent should charges be brought.

20      Q All right. And in that role you just described, was it  
21      important for you to determine if Katie Spencer, on  
22      December 11, 1984, had a memory sufficient to retain an  
23      independent recollection of the occurrence?

24                                  MS. FETTERLY: Objection. Asked and answered.

25      A I think now I've answered it at least three times.

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1 A I don't recall.

2 Q All right. Would it be appropriate to ask, in establishing  
3 Katie Spencer's competency, whether she knew what building  
4 she was in?

5 A I don't know why that would be appropriate or  
6 inappropriate. How would she know? It was a big building.

7 Q All right. Would it have been appropriate in evaluating  
8 her competency to ask her what town she was in?

9 A There are lots of questions that could be asked, Counsel,  
10 and it wouldn't be inappropriate to ask that.

11 Q Would you agree there are lots of questions that could have  
12 been asked that weren't on December 11, 1984?

13 A There are plenty of questions that could have been asked,  
14 yes.

15 Q That would have been appropriate and relevant in  
16 determining or evaluating her competency, correct?

17 A I asked sufficient questions to allow me to make a  
18 recommendation to the prosecuting attorney that I thought  
19 that if this case were charged, she probably would be found  
20 competent by the judge.

21 Q How do you know that?

22 A That was my opinion. That's all I was asked to do.

23 Q Would it have been appropriate in evaluating her competency  
24 to determine if she knew her ABC's?

25 A That would be a question that could be asked, yes.

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1       her to say things to you, did you?

2   A I don't think that would be, first of all, a  
3       developmentally appropriate question to ask a  
4       five-year-old. I doubt if she could answer that  
5       appropriately.

6   Q And that's why you didn't ask it, right?

7   A You're asking me whether I asked a five-year-old child  
8       whether someone else who had interviewed her weeks before,  
9       or in this case months, six or seven weeks before, had told  
10      her to say things. I didn't ask that question and  
11      probably -- I didn't ask that question.

12   Q All right. And Sharon Krause actually had interviewed her  
13      more recently than all those weeks before. You know that,  
14      right?

15   A I interviewed Katie on December 11, and I'd have to look at  
16      notes to refresh my recollection, but I thought Sharon had  
17      interviewed her in October.

18   Q All right. You got notes of this?

19   A I prepared a time line that would help me remember the  
20      order in which things happened.

21   Q Do you have notes, Mr. Peters, of your interview of Katie  
22      Spencer on December 11, 1984?

23   A No.

24                   MS. FETTERLY: Object to the form.

25                   THE WITNESS: I can answer that question.

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1 A I don't believe credibility is one of the elements that  
2 would be considered by the judge in Washington anyway.  
3 Maybe in Illinois. That's not one of the elements of  
4 competency. That's an issue for the --

5 Q Okay. And I'm talking about the evaluation -- let me put  
6 it this way. Were you assessing Katie Spencer's  
7 credibility on December 11, 1984, when you interviewed her  
8 on videotape?

9 A To the extent that I was testing to see whether she would  
10 identify anybody else, in terms of the previous interview  
11 with Shirley where she had named other people, she made it  
12 clear that she was not and that the behaviors that she  
13 described to me, both with words and behaviors, were  
14 uniquely related to males. She described male sexual  
15 behavior, not female sexual behavior.

16 And so to that extent, I was, to that extent, judging  
17 her credibility. She described sexual behavior that a  
18 five-year-old child would not know about if they hadn't  
19 experienced it that was consistent with what she told  
20 Shirley and consistent with what she told Sharon and  
21 consistent with what she told Ann Link. Not completely  
22 consistent; there were clearly inconsistencies within what  
23 she said, but she indicated to Shirley that Ray Spencer had  
24 engaged in inappropriate sexual behavior with her. She did  
25 the same with Sharon and excluded the other people, and she

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1 did the same with Ann Link and similar with me. So to the  
2 extent that that was a credibility assessment, and I think  
3 it was, I did that.

4 Q So you made a credibility assessment of Katie Spencer on  
5 December 11 of 1984, correct?

6 A To the extent of what I just described.

7 Q Is it a fair statement to say that one of the purposes of  
8 you interviewing Katie Spencer on December 11, 1984, was to  
9 evaluate her credibility?

10 A My purpose of interviewing Katie Spencer was very clear.  
11 It was to determine whether she might be found competent  
12 and whether she might be able to testify in court.

13 Q And let me ask you this, and maybe it's a "yes," "no," or  
14 "I don't know," but I'm going to ask you if you agree with  
15 this statement. One of the purposes of your interview of  
16 Katie Spencer on December 11 of 1984, one of the purposes  
17 was to assess Katie Spencer's credibility?

18 A Credibility is an issue for the finder of fact. If the  
19 finder of fact believes her story, if the prosecuting  
20 attorney made the decision to file the charges, that is an  
21 issue for the jury.

22 Q So is it fair to say that then -- that didn't answer my  
23 question. Yes, no, or you can't answer the question? I'll  
24 ask it again.

25 MS. FETTERLY: Objection. Go ahead.

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1 like an answer to this question without a narrative about  
2 all the other things you're adding on now for the third  
3 time.

4 Is it a fair statement to say that on December 11 of  
5 1984, one of the purposes of you interviewing Katie Spencer  
6 was to evaluate the credibility of Katie Spencer?

7 A I've already answered that question. My purpose was to  
8 determine competency or the probability of competency and  
9 whether she could testify -- whether she could tell me the  
10 story that there -- later could be related in court so the  
11 jury could determine her credibility.

12 Q And I am not asking you what -- to lay out what your  
13 purpose was. I'm asking you again, and I believe in good  
14 faith the answer is "yes," "no," or "I can't answer the  
15 question as you posed it."

16 Was one of your purposes on December 11, 1984, when  
17 you interviewed Katie Spencer, to assess the credibility of  
18 Katie Spencer?

19 A You can beat that horse till it's dead, Counsel. I've  
20 answered the question.

21 Q Is your answer "yes"?

22 A I've answered your question.

23 Q Is your answer "no"?

24 A I've answered your question, Counsel.

25 Q Is your answer "I can't answer the question as you posed

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1       it"?

2   A   Counsel, I think you're getting abusive. I've answered  
3           your question.

4   Q   You haven't answered the question, and I'm going to ask you  
5           again. And you know you haven't answered the question.

6           MS. FETTERLY: I'll object to that statement.

7   Q   (By Mr. Johnson) Was one of your purposes -- was one of  
8           your purposes, Mr. Peters, in interviewing Katie Spencer on  
9           December 11 of 1984 to assess the credibility of Katie  
10          Spencer?

11   A   I've answered your question, Counsel.

12   Q   What is your answer?

13   A   I'll just have the court reporter read it back to you.  
14          I've answered it probably three times.

15   Q   Give it to me one more time, please.

16   A   My purpose in interviewing Katie Spencer was to determine  
17          whether she might be competent to testify should this case  
18          be charged and whether she could relay the story to me as  
19          the investigation had -- had funneled it down to the way it  
20          was at the point that I understood it to be. That was my  
21          purpose.

22   Q   All right. And we'll reserve the right to have an answer  
23          to that question, reopen the deposition, and approach the  
24          judge in the future, if need be. If you have an answer to  
25          that question, sir, by the end of the deposition, please

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1 contacted Clark County about the allegations before anyone  
2 else did?

3 A I believe that the allegations in this case were reported  
4 to authorities initially by Shirley Spencer, and that got  
5 the ball rolling. What happened subsequent to that, first  
6 of all, I don't recall; and, second, if something -- if  
7 what you're trying to imply is what happened would  
8 certainly be subject to interpretation if the person was  
9 trying to cover his tracks. But the initial report was  
10 made by Shirley Spencer to authorities.

11 Q And I'm not trying to imply anything, sir. I'm just trying  
12 to get your answers.

13 Do you agree that Ray Spencer was the first person to  
14 report the allegations to the Vancouver Police Department?

15 A I don't recall. I'd have to look at the reports to see.

16 Q Okay. And if he indeed -- let's assume for the purposes of  
17 this question that Ray Spencer was the first person to  
18 report the allegations you say Katie made to the Vancouver  
19 Police Department. That would not be consistent with Ray  
20 Spencer's guilt, would it?

21 A No, it might be consistent with him trying to cover up  
22 because he knew it had already been reported.

23 Q And would that be your opinion?

24 A You asked -- either way I answered that question, it would  
25 have been my opinion, Counsel.

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1 Q Did you have any understanding that Shirley Spencer had  
2 made statements that she did not believe Ray had done  
3 anything to Katie?

4 A I know she was standing by her husband. I remember that.

5 Q Okay. Did you know that Katie had stated that she did not  
6 want to talk to boys about the abuse?

7 A To whom and when? I don't remember that.

8 Q Okay. You can take a look at Exhibit 3, if you'd like.  
9 This is Rebecca Roe's report on page 1.

10 A (Witness complying).

11 Q Seven lines up from the bottom.

12 A (Witness perusing document) I see where that's written  
13 there. It says, "Sharon Krause had to spend several hours  
14 one-on-one with victim who also indicated she would not  
15 talk about it, quote, with boys, end quote."

16 Q All right. And staying on that page since you have it in  
17 front of you, did you also know that Katie did not talk to  
18 a female counselor about it?

19 A Actually, that's in -- I see that is written in Rebecca  
20 Roe's report, but that's not accurate.

21 Q Well, Rebecca Roe reported that Katie would not talk to a  
22 female counselor about it, correct?

23 A I see what's written in Rebecca Roe's report, but as I told  
24 you, that's inaccurate. I talked to the female counselor  
25 myself who told me that she had been speaking with Katie

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1 A Sharon Krause had interviewed Katie Spencer, yes.

2 Q Yeah. You also knew as of, on or about, November 27 of  
3 1984 that Katie Spencer -- the words you say she said were  
4 uncorroborated by anything?

5 A Oh, I would disagree with that.

6 Q What was the corroboration of Katie Spencer as of  
7 November 27, 1984? Something other than her words that you  
8 say she said.

9 A Well, Counsel, when five-year-old children display  
10 precocious sexual knowledge of intimate sexual acts such as  
11 fellatio and cunnilingus, according to at least the law in  
12 the state of Washington at the time, that is corroboration,  
13 and it is admissible. There's a case that I recall from  
14 way back when that I used -- that I was familiar with from  
15 having prosecuted these cases called In Re Penelope B, and  
16 that allowed the admission of out-of-court statements that  
17 would be otherwise be hearsay of witnesses describing  
18 precocious sexual knowledge on the part of a very young  
19 child.

20 And in this case it's my opinion that Shirley and/or  
21 Sharon and/or Ann Link would all have been allowed to  
22 testify that Katie demonstrated that precocious sexual  
23 knowledge. That is corroboration.

24 Q All right. And other than what you've just described, was  
25 there any corroboration? What I'm talking about is

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1 A Well, I recall when the reports first came in, I quickly  
2 reviewed them. I made my own assessment of what I would do  
3 if the ultimate decision were mine, which of course it was  
4 not. I spoke with him, told him my opinion, suggested to  
5 him that because of the sensitive nature of the case that  
6 he might want to refer it to outside counsel for review  
7 because my recommendation was at that point going to be I  
8 didn't think we could prove the case.

9 Q I'm sorry. What was that you just said?

10 A I said my recommendation was going to be that I didn't  
11 think we could prove the case. I thought he did it, I  
12 thought there was probable cause, but I thought there were  
13 proof issues.

14 And I suggested that he refer it to Becky Roe, whom I  
15 knew. I knew from her teaching at our prosecutors'  
16 conferences and because she was the head of the Sexual  
17 Assault Center. And based on that recommendation while I  
18 was in the first-degree murder trial on or about  
19 November 12 Art Curtis referred the case to Becky Roe, and  
20 it was as a result of that that she wrote her  
21 recommendation of November 27. So from the very beginning  
22 when the case first came in, Art Curtis was actively  
23 involved with it.

24 Q Can you give me the date of what you just described, all  
25 those things? What time period are we talking about?

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1 A Which things are you referring to?

2 Q Okay, well, you said from the very beginning. What was the  
3 beginning?

4 A Well, the beginning was when the reports came in on  
5 November 1st.

6 Q Okay, that was --

7 A There may have been phone calls or conversations prior to  
8 that, but the case was initially -- my recollection from  
9 reviewing these reports is that they were first submitted  
10 to us on or about November 1st.

11 Q Okay. And then when you -- you said you made your  
12 recommendation that it wasn't provable, when was that?

13 A I don't recall.

14 Q I'm sorry. What you said about when it wasn't provable,  
15 when was that?

16 A I don't recall. I don't recall that date, but I do recall  
17 that I assessed it, mindful of the fact that I was  
18 preparing for a first-degree murder case, I assessed it as  
19 best I could given the other things I was focused on, and I  
20 told Mr. Curtis what my thoughts were.

21 Now, those kind of conversations happen in  
22 prosecutors' offices all the time. You kick it around.  
23 What do you think about this? What do you think about  
24 that?

25 Q Again --

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1 A And I would have done that in this case. And based upon --

2 Q I'm not asking that. What were the proof issues you're  
3 referring to?

4 A The same things that Becky Roe talked about. The fact that  
5 she had --

6 Q Go ahead and list them for me. Give me your proof issues  
7 rather than hers.

8 A Well, the fact that she had named two other individuals as  
9 potential perpetrators. I think those were resolved by law  
10 enforcement and clarified by the fact that the other two  
11 alleged perpetrators could not have performed fellatio on  
12 her as she described, because they were females, and could  
13 not have attempted penile penetration which she described,  
14 because they were females.

15 So the weight of the evidence tended to suggest that  
16 it was a male perpetrator and how the circumstance of  
17 alleged female perpetrators came up in the conversation  
18 with Shirley, nobody really knows, because it was between  
19 Katie and Shirley. But that was an obvious issue that  
20 would have clouded any trial should it have gone. It  
21 didn't mean that it didn't happen; it didn't mean there  
22 wasn't probable cause.

23 There was plenty of other corroboration. I mean, the  
24 child has precocious sexual knowledge. She had apparently  
25 engaged in excessive masturbation. She learned that

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1 someplace. Her mother described her underwear being worn  
2 through where she had been apparently masturbating.

3 There were a number of other behavioral indicators  
4 that were consistent with a child having been traumatized.

5 The trauma could have been sexual abuse. It could have  
6 been other things as well. But there were clearly proof  
7 issues that would have come up at trial.

8 And my thought at that point in time I was focused on  
9 a first-degree murder trial was that this is a problem  
10 case.

11 Q At the time you're talking about, when you made this  
12 assessment, you knew Katie had lied about Karen Stone,  
13 correct?

14 A I knew that there had been allegations of -- that Sharon  
15 and -- Sharon Stone -- that Karen Stone and DeAnne Spencer  
16 had engaged in inappropriate behavior. I also knew that  
17 they had been cleared as suspects.

18 Q And that's why I read the report. That Katie had lied  
19 about them, correct?

20 A If you want to use the word "lie." I'll grant you that  
21 it's in the report.

22 Q Okay. When -- did the Clark County prosecutor's office  
23 supervise the investigation into these allegations?

24 A No.

25 Q So are you aware that Michael Davidson said the Clark

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1 Q I'm not asking you whether -- other cases or anything like  
2 that. Did you personally supervise the Spencer  
3 investigation?

4 A Absolutely not.

5 Q Did Art Curtis supervise the Spencer investigation?

6 A I don't believe so. I don't know what he -- I don't know  
7 what happened in his --

8 Q Can you --

9 A I don't know what happened in his office, but I certainly  
10 doubt it.

11 Q And did any other prosecutor that you're aware of supervise  
12 the investigation?

13 A The only other prosecutors that were involved were just  
14 tangential for routine matters, and I'm sure they did not.

15 Q Who were they?

16 A Mike Foister was present at the initial arraignment when  
17 Mr. Spencer turned himself in in January. And Jim Gavid, I  
18 saw a note in the file that he must have appeared at a  
19 hearing in March or April. It was in his handwriting.  
20 Other than that, the only other prosecutor that was  
21 involved was -- of course, you know about Rebecca Roe, and  
22 then the case was assigned to Barb Linde from the King  
23 County prosecutor's office for about three and a half  
24 months.

25 Q Now, speaking of Rebecca Roe, she's a specialist in sex

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1 abuse prosecutions?

2 A Yes.

3 Q And you referred the case to her in part because you didn't  
4 want it to look like you were favoring Ray Spencer in the  
5 investigation?

6 A If you -- by you, you mean the plural you, the prosecutor's  
7 office, it was actually Art Curtis who made the referral on  
8 my recommendation.

9 Q And that was why, so it would not look like the  
10 prosecutor's office was favoring Ray Spencer?

11 A I think there were multiple reasons for it. The reason I  
12 personally made the suggestion was that I did not feel  
13 confident about the case, about prosecuting the case.

14 In our office we had what you'd call colloquially  
15 "File it, you try it," and if you file a case, it's your  
16 responsibility to finish it. I personally, at that point,  
17 particularly given all the other things I had on my plate  
18 at that time, which were substantial, did not want to try  
19 this case based upon the initial reports.

20 And so that was -- that was my initial impetus.  
21 There's obviously the concern that about 40 percent of our  
22 cases came from the Vancouver Police Department, and for us  
23 to prosecute one of their members obviously would create  
24 dissension amongst the members. That was a big concern  
25 that we talked about as well.

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1 Q Is it fair to say that during this time period we're  
2 talking about -- November/December of 1984 -- you made all  
3 the charging decisions regarding the prosecution of sex  
4 crimes involving children in Clark County?

5 A Not exactly. I was the person who was the regular intake  
6 person for the sex crimes. If I was involved in trials, as  
7 I was in this case, and frequently was, if it was an  
8 emergent matter, then it would go to someone else.

9           If it was a routine matter, then it would just get  
10 put in a box and I would get to it, and I would make -- in  
11 a routine case I would make a charging decision, and then  
12 the supervisors would assign the case out to one deputy  
13 prosecutor or another. I didn't keep them all.

14           If it was a sensitive case, no decision would be made  
15 without the boss's input.

16 Q Okay. You mentioned earlier that you recommended that the  
17 case be submitted to Rebecca Roe?

18 A I definitely did that.

19 Q You did that?

20 A I did that.

21 Q Okay. And then that recommendation was made to Art Curtis?

22 A Yes.

23 Q Was anyone else involved in that decision?

24 A Well, it was between a subordinate and his supervisor. I  
25 don't know if the criminal chief may have been involved.

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1 I'm not sure. I don't remember.

2 Q Who was the criminal chief?

3 A Roger Bennett.

4 Q And how about Sharon Krause, was she involved in that  
5 decision?

6 A Not in the decision. I'm sure she may have known about it,  
7 but, I mean, she was -- in the hierarchy of the Sheriff's  
8 Office, she was a detective. They had their supervisors  
9 and a Sheriff who were in their hierarchy. Our hierarchy  
10 was different.

11 Q When that submission was made, you wanted to make sure that  
12 Rebecca Roe had all the evidence available, correct?

13 A I was in trial when that decision was made. Art Curtis  
14 submitted that while I was in trial. I was not involved in  
15 that in any way.

16 Q So you were not involved in any way as to what evidence  
17 would be submitted to Rebecca Roe for her review; is that  
18 correct?

19 A No. I'm sure Art Curtis had the file, and he sent her  
20 whatever he had. That's my assumption.

21 Q Are you aware of what she sent her?

22 A No. I've seen the --

23 Q Rebecca Roe was a --

24 A I've seen the letter. The letter just said -- says the  
25 reports are attached. No, no, wait a minute. That was a

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1 different time. That was when it was sent to -- submitted  
2 for prosecution to King County. I'm not sure about whether  
3 I've seen a letter related to submitting it to Rebecca Roe.  
4 I take that back. I was thinking of something else.

5 Q At that time -- at that time Rebecca Roe was a highly  
6 respected expert in the area of sex abuse prosecutions,  
7 correct?

8 A She was. Yes, she was.

9 Q And she still is?

10 A I believe she's been in private practice for a long time.  
11 I don't think she's prosecuted a case for 17 or 18 years.  
12 But her opinions would certainly be --

13 Q Okay.

14 A -- would be credible.

15 Q All right. At the time the case was submitted to Rebecca  
16 Roe, can you estimate how many hours of videotaped footage  
17 existed of Sharon Krause's meetings with Katie?

18 A I don't believe there were any.

19 Q Can you tell me how many hours of videotaped footage of you  
20 with Katie existed?

21 A There were none.

22 Q You're sure of that?

23 A On November 12, 1984?

24 Q Novem -- as of November 27, on or about the time it was  
25 submitted to Rebecca Roe.

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1 A I'm sorry. Your facts are incorrect. The matter was  
2 submitted to Rebecca Roe on or about November 12 --

3 Q Okay.

4 A -- and she wrote her opinion. She was in Seattle. This  
5 was transmitted by mail, so Mr. Curtis, it's my  
6 understanding, referred it to her on or about November 12,  
7 and I was in trial at that time.

8 Q Do you know how many -- can you estimate how many hours of  
9 videotaped footage existed of any Clark County law  
10 enforcement officials and Katie?

11 A Well, I'm sure there were none because they didn't have a  
12 facility to interview children, and obvious from the  
13 interview that I did, it was a poor -- we used the squad  
14 room. They did not have a child interview room at that  
15 point. That's something that changed a few years later.

16 Q So you're unaware as to whether there's any videotaped  
17 footage out there?

18 A I'm not unaware. I'm sure there aren't any, there isn't  
19 any.

20 Q Because if there was, you would know about it, correct?

21 A I believe so.

22 Q Because that's pretty important stuff, videotaped footage  
23 of an investigator with a witness?

24 A Clark County -- neither the Clark County Sheriff's office,  
25 nor the Vancouver Police Department videotaped interviews

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1 at that point with child abuse or any other victim, abuse  
2 victims.

3 Q Had they done so, it would be very important for you to  
4 know about it as the Clark County prosecutor, correct?

5 A Had they done so, I would have known about it.

6 Q Okay.

7 MR. FREIMUND: You know, it's lunchtime here.

8 MR. JOHNSON: Our lunch just came, yeah.

9 MR. FREIMUND: Yeah. Okay. Do you want to take  
10 a break for about 20 minutes?

11 MR. JOHNSON: How long do you want?

12 MS. FETTERLY: We've been doing 20 minutes.

13 Twenty minutes?

14 MR. JOHNSON: That's fine.

15 MS. FETTERLY: That would be 20 after 12 here.

16 MR. JOHNSON: All right.

17 (Recessed at 12:01 p.m.)

18 (EXHIBIT NOS. 42 & 43 MARKED)

19 (Reconvened at 12:39 p.m.)

20 Q (By Mr. Johnson) Mr. Peters, other than the proof issues  
21 with the case you've already described, are there any other  
22 proof issues?

23 MS. FETTERLY: What point in time?

24 A At what point in time are you referring?

25 Q (By Mr. Johnson) Let's take November 27 of 1984.

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1 A Well, there's always the vagaries when you have a young  
2 child and whether that child will be found to be competent  
3 and whether they'll cooperate with you going forward. So  
4 that would always be an issue in any case with a child this  
5 young. Our office had done cases, not me personally, but  
6 other attorneys, with children as young as four. But  
7 that's an issue; that would always be an issue.

8 Q Okay. Any other issues with regards specifically to the  
9 Spencer case? Any proof issues you have not mentioned?

10 A Probably are some. I don't offhand remember them right  
11 now.

12 MS. FETTERLY: Counsel, again, you're referring  
13 to the same -- are you referring to the same time period,  
14 November of '84.

15 MR. JOHNSON: Yes.

16 MS. FETTERLY: Okay.

17 MR. JOHNSON: Yes.

18 Q (By Mr. Johnson) Now, also same time period, you had  
19 mentioned, I believe, that Katie was exhibiting behavioral  
20 things suggesting she had been abused. You stated that she  
21 was excessively masturbating; is that correct?

22 A Maybe I need to correct your question. I indicated --

23 Q Sure.

24 A -- that she had been exhibiting behavioral indicators that  
25 could be indicative of a lot of things. Some of them

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1 appear to be specifically sexual; others could have been  
2 indicative of lots of things. And I'm pretty sure that's  
3 what I said.

4 Q Okay. With regard to Katie Spencer's excessive  
5 masturbation, is that documented anywhere in the file?

6 A Yes, it's in Sharon Krause's report of Shirley Spencer.

7 Q Okay. How about --

8 A Now, you may have --

9 Q -- the underwear --

10 A I'm sorry, Counsel.

11 Some inferences may have to be drawn. I have some  
12 notes. Can I refer to them?

13 Q Sure.

14 A Okay. This is -- these are notes that I took last week  
15 from Sharon Krause's interview with DeAnne Spencer from  
16 October 15th. It would have been October 15, 1984.

17 MR. JOHNSON: And could we just mark his notes  
18 as Exhibit No. 44 if they are not deemed privileged?

19 MS. FETTERLY: That's fine.

20 THE WITNESS: Okay.

21 MS. FETTERLY: 44.

22 (EXHIBIT NO. 44 MARKED)

23 THE COURT REPORTER: 44's been marked.

24 A So with regard to what I call possible behavioral  
25 indicators or red flags, some of which could mean lots of

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1       things, some of them appear to be focusing on precocious  
2       sexual behavior. Here's what I noted from the interview  
3       with DeAnne Spencer.

4       Q And let me stop you for one second. I apologize.

5                    MR. JOHNSON: Is there any Bates number,  
6       Counsel, on this report that he's reading from, or is that  
7       in discovery?

8                    MS. FETTERLY: No, it's simply something he  
9       recently created.

10                  MR. JOHNSON: I'm not talking about his notes.  
11       I'm talking about the October 15, 1984, report.

12                  MS. FETTERLY: It should be.

13                  THE WITNESS: Yeah.

14                  MS. FETTERLY: I mean, it's one of the reports,  
15       the Detective Krause reports, I'm pretty certain. I don't  
16       have that right in front of me.

17       Q (By Mr. Johnson) Is this a report reflecting an October  
18       15, 1984, interview, or is there some other date of the  
19       interview and it's reflected in a report dated later?

20       A Oh, I don't know.

21                  MS. FETTERLY: There could be some confusion on  
22       the date of the interview versus the date of the report,  
23       but I believe Sharon Krause only did one interview of  
24       DeAnne Spencer, and I believe that's what these notes refer  
25       to.

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1                   THE WITNESS: That's right. It was the  
2 interview she conducted with her in Sacramento.

3                   MR. FREIMUND: If I might interject, I'm sorry,  
4 but Exhibit 42, the time line indicates, and you probably  
5 don't have this yet, but it indicates that on October 15,  
6 "Krause interviews DeAnne Spencer on the telephone."

7                   October 16, DeAnne Spencer takes polygraph. No  
8 deception indicated. And then there's several other  
9 entries, but at December 8, I'm sorry, October 18 it says  
10 "Krause interviews DeAnne Spencer at Holiday Inn," and  
11 those are the only ones I see referring to DeAnne Spencer.

12 A I think -- this is one long continuous report of Krause's  
13 visit to Sacramento, as I recall.

14 Q All right. Can you proceed with what you were saying?

15 A Yes. Well, DeAnne told Krause that Katie had met with  
16 Detective Flood and a therapist and indicated there had  
17 been something sexual between her and her father, but  
18 nothing more than that.

19                   And these possible behavioral indicators or red  
20 flags, things that, like I said, could mean lots of  
21 different things. DeAnne related before Katie went up to  
22 Vancouver in the summer of '84 she would become upset and  
23 at times hysterical, crying and indicating she did not want  
24 to go to her father's. DeAnne indicated that Katie's  
25 behavior toward men concerned her, that she seemed to know

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1 how to "manipulate men," those last two words in quote.

2 DeAnne related to Krause that it seemed to her to be more  
3 that she was acting in an adult way different than most  
4 four- to five-year-old children.

5 DeAnne -- Krause reported that DeAnne said to her  
6 that Katie's behavior around men seemed sexual. She'd sit  
7 in their laps rubbing and clinging, did not seem  
8 appropriate for a five-year-old. She said that after the  
9 1983 visit up to see Mr. Spencer, she observed Katie  
10 rubbing the genital area of her body. She said that after  
11 the 1983 visit Katie would ask her mom to put medicine on  
12 her genital area because it was sore. She said that after  
13 the 1983 visit Katie seemed preoccupied with DeAnne's  
14 breasts.

15 Krause wrote that DeAnne told her after the Easter  
16 1983 trip, DeAnne walked into the bathroom and saw Katie  
17 touching her brother Matt's penis. After that, DeAnne told  
18 Krause that she made sure the two were not alone in the  
19 bathtub.

20 The report continues that, after the 1983 visit, a  
21 baby-sitter caught Katie and her two-year-old cousin under  
22 the covers with their clothes off. When asked, Katie  
23 reportedly said, quote, That's what moms and dads do, end  
24 quote.

25 After Katie returned from the summer of 1984 visit

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1       when these acts allegedly occurred, DeAnne reported that  
2       the whole front area of Katie's nightgown where the crotch  
3       would be was worn almost completely through, and that's  
4       where I drew the inference that that suggested  
5       masturbation.

6           She said that after the visits with her father in the  
7       summer of '82, Katie developed a sore on her labia. DeAnne  
8       reported that the summer before she and Mr. Spencer split  
9       up, which she said was 1981, she, DeAnne, developed a case  
10      of herpes. She said she believed she got it from Ray. She  
11      said that the sore that she observed on Katie's labia  
12      reminded her a lot of a herpes blister, though she had no  
13      proof that Ray ever had herpes or what she saw on Katie was  
14      herpes, Krause reported.

15           The report continues --

16   Q Let me stop you. So you're not just reading the report,  
17   are there other reports besides this one from which you  
18   drew the conclusion about excessive masturbation, underwear  
19   worn out, and precocious sexual knowledge?

20   A I'm reporting what was in Krause's interview with Shirley.

21           MR. FREIMUND: Or DeAnne.

22   A I'm sorry. I take that back. DeAnne.

23   Q (By Mr. Johnson) With DeAnne?

24   A I mixed the two up.

25   Q You're referring to DeAnne?

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1 A I was. I'm sorry.

2 Q Okay. Aside from that report, are there other documents  
3 that support your assertion that Katie was excessively  
4 masturbating, her underwear was worn out, and she had  
5 precocious sexual knowledge?

6 A Yes.

7 Q And would those also be Sharon Krause reports --

8 A No.

9 Q -- authored by her?

10 A No.

11 Q What would those be?

12 A The information now, your question was compound, had  
13 multiple subjects in it, but the behavioral indicators  
14 portion of it was relayed to me by Ann Link, and it's in  
15 the notes of Rulli and my interview with Ann Link.

16 Q All right. Other than Ann Link and the report you've read,  
17 are there other documents that reflect the excessive  
18 masturbation, worn-out underwear, and precocious sexual  
19 knowledge?

20 A The initial reports documented by Shirley Spencer clearly  
21 show this child had been prematurely sexualized including  
22 by a male, whom she identified as her father.

23 Q All right. Other than that, any more?

24 A Off the top of my head, I can't recall.

25 Q You also stated that -- or did you state that you gave

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1 Q And at that time was Ray restricted from leaving the state  
2 of Washington?

3 A I don't know why he would be. The case was still under  
4 investigation. He'd not been before a court. I'm sure  
5 not.

6 Q He was free to go anywhere, right?

7 A Yes.

8 Q And at that time you were aware that Ray owned firearms?

9 A I was not aware of anything that Ray owned. I can draw  
10 assumptions. I can draw assumptions, but I'm not aware.

11 Q You would assume -- you would assume as a police officer,  
12 he might have access to firearms; is that correct?

13 A Yes.

14 Q Okay. And he was also living with a minor child at that  
15 point; is that correct?

16 A I don't know that I knew where he was living.

17 Q Okay. You are unaware -- strike that. You were unaware of  
18 him having any restrictions with regard to minor children  
19 at that point, correct?

20 A At what point, Counsel?

21 Q Still talking about November of 1984, November 27 of 1984  
22 specifically?

23 A That's right, I'm not aware that there were. He had not  
24 been to court yet.

25 Q Okay. And knowing all those things that I've just laid out

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1 your office declined charges as of on or about November 27  
2 of 1984, correct?

3 A That's actually inaccurate. And I recall from having read  
4 my transcript of 1986 that I made have said that. And if I  
5 did, I was in error. If you've read that transcript,  
6 you'll understand that I spent -- my task at that time was  
7 to find out if there was a medical report in the  
8 prosecutor's file, and I spent about two hours following up  
9 on that task. That recollection was inaccurate. It was  
10 my -- it was my recommendation that it be declined. It was  
11 Rebecca Roe's recommendation that it be declined, but it  
12 had not been declined. So I was inaccurate when I said  
13 that.

14 Q When you refer to being inaccurate as to what you said,  
15 Mr. Peters, are you referring to the sworn deposition you  
16 gave July 30 of 1996?

17 A I said that in some prior testimony.

18 Q And you had been sworn to tell the truth?

19 A I -- yes.

20 Q And you are now saying that prior testimony regarding the  
21 Ray Spencer case that you were sworn to tell the truth, yet  
22 you gave inaccurate testimony --

23 A No, I'm saying.

24 Q -- is that correct?

25 A No, I'm saying I had a misrecollection. I -- my

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1 recommendation was to decline it. Rebecca Roe's  
2 recommendation was to decline it. But the ultimate  
3 decision in any prosecutor's office is made by the  
4 prosecuting attorney, and so the formal process of that  
5 happening had not happened. So I just misremembered when I  
6 was asked that question.

7 Q That's not my -- so is your testimony -- strike that. Is  
8 your prior sworn testimony on this point that you're  
9 describing in this case inaccurate?

10 A Yes.

11 Q All right. You declined or you would say that you  
12 recommended declining the charges; is that your testimony  
13 today?

14 A That was my feeling. That was what I -- when you have  
15 conversations among prosecutors, you express your opinions,  
16 and that was my opinion initially.

17 Q Have you ever documented the opinion you just gave?

18 A I've repeated it multiple times including during that same  
19 deposition that you're referring to, or the testimony --

20 Q Have you ever documented?

21 A That's called documentation.

22 Q Have you ever -- okay. Other than that, have you ever  
23 documented it?

24 A It was an opinion. There -- no, I don't recall if it's  
25 written down anywhere. We wouldn't have done that. That

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1 cleared, and her brother said she made up stories; is that  
2 correct?

3 A That's obviously a multiple, compound question. My -- I  
4 declined or, excuse me, I expressed my personal belief at  
5 the time that we would have difficulty proving the case,  
6 and then in the context of all the other things that were  
7 on my plate at that time, and our "You file it, you try it"  
8 rule, I didn't want to try this case. So my recommendation  
9 was not to pursue it.

10 Q Because it was weak, right?

11 A It was definitely weak.

12 Q All right. Now, what did you do on the case with regard to  
13 the case between November 27, 1984, and December 11 of  
14 1984?

15 A Nothing. I was very busy with another -- with something  
16 else.

17 Q When was that meeting with Karen Stone? I guess you said  
18 maybe that was Art Curtis, but just to mention, a  
19 prosecutor spoke with Sharon Krause, and you said you  
20 weren't sure if that was Art Curtis or yourself. Has  
21 anything refreshed your recollection as to whether you had  
22 that meeting with Sharon Krause about Karen Stone?

23 A I think -- your question assumes something that may not be  
24 accurate. You're assuming there was a meeting. I would --  
25 more likely --